

congregation socially and Pastor Lowry felt that he may be taking advantage of this woman.

Pastor Lowry's suspicions were taken seriously by Officer Mote, in part because on a prior occasion the pastor had "concerns" about a new member of his parish and upon investigation that individual turned out to be wanted by the F.B.I. Lowry told the officer that VanZant had been attending his church, dating this woman, and indicating that the Full Gospel Church was to become his "home church." There was no indication as to the meaning of the term "home church." However, Pastor Lowry told the officer that VanZant had told inconsistent stories about his past. He also reported that VanZant had taken up residence on Franklin Street in Ellsworth and that he had come to Maine from Arkansas. Officer Mote did not know exactly how the pastor had acquired information about VanZant's current residence, but speculated that the source may have been visitor's cards which are kept on file at the church.

Officer Mote decided that he would visit the VanZant residence on Franklin Street in order to speak with Mr. VanZant and to see "what was what." Officer Mote was not investigating any criminal activity and did not believe that Lowry had reported any crime. Mote and another officer in a separate vehicle headed to the VanZant residence, which was located on a residential street within Mote's patrol area and one with which he had familiarity. On the way there he happened to stop to chat with a maintenance crew and while so engaged he observed a motor vehicle with Arkansas plates pull out of the driveway of the VanZant residence and head down the road.

Suspecting that VanZant might well be the operator of the vehicle, the officer initiated a traffic stop. He stopped the vehicle because he recognized the gold cutlass

with Arkansas plates as being a vehicle that had been in the area for some time and because he believed the operator might be VanZant and he wanted to talk to him based upon Pastor Lowry's report. Although he recognized the vehicle as one that he had seen in the Town of Ellsworth on prior occasions, Officer Mote had no reason to associate it with VanZant except the Arkansas plates and the fact that it exited the driveway where VanZant supposedly lived.

At the time Mote stopped the vehicle, August 1, 2000, he had seen the gold cutlass in Ellsworth numerous times throughout the month of July. Mote also believed that he had seen the same vehicle in Ellsworth in March before he left Town to attend the Criminal Justice Academy. His recollection of the March viewing was sketchy. However, he had clearly seen the vehicle any number of times throughout July although he did not know the exact dates. The officer believed that the vehicle had been in the area more than 30 days. Under Maine law, if one becomes a Maine resident one must register one's vehicle in this State within 30 days of establishing residency. *See* 29-A M.R.S.A. § 351(1-A). Failure to register is a traffic violation. The officer could not identify the operator of the vehicle prior to the August 1 stop and had no reason to believe that VanZant's identification was improper until after the stop of the motor vehicle. Subsequent investigation has led the authorities to believe that VanZant is actually Ronald M. Tyler.

Tyler testified that he is from Arkansas and that he was not in Maine in March of this year. He also testified that he arrived in Maine sometime in mid-July. He did not provide the precise date of his arrival. Tyler conceded that he did attend some services at Pastor Lowry's church, but denied that he had ever indicated to the pastor that he

intended to relocate to Maine. I do not place a great deal of importance on Tyler's testimony. I am persuaded by Officer Mote's testimony that Tyler's vehicle was in the Ellsworth area for most of the month of July and that Pastor Lowry conveyed to him the impression that Tyler (a/k/a/ VanZant) intended to relocate to Maine. Mote testified that his sole justification for stopping the vehicle was the 30-day residency requirement regarding motor vehicle registration.

Discussion

The test to be applied to this stop is a familiar two-pronged analysis. I must determine whether the stop was justified at its inception, and if so, whether the action taken was reasonably related in scope to the circumstances that justified the interference. *See United States v. Trullo*, 809 F.2d 108, 111 (1st Cir. 1987). "To satisfy the first prong, 'the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" *United States v. Young*, 105 F.3d 1, 6-7 (1st Cir. 1997)(citations omitted). In the present case, those specific and articulable facts do exist.

The violation of a traffic infraction witnessed by a police officer is sufficient justification for the stop of the vehicle. *See State v. Taylor*, 1997 ME 81, ¶ 9, 694 A.2d 907, 909 (holding stop for inadequate illumination of plate light was justified); *State v. Seavey*, 564 A.2d 388, 389 (Me. 1989) (holding failure to use turn signal was sufficient basis for stop). A traffic infraction is any violation of any provision of Title 29-A of the Maine Revised Statutes Annotated or of any rule promulgated under the authority of Title 29-A (except those violations expressly defined as crimes). *See 29-A M.R.S.A. § 101(85)* (1996).

The officer had seen the gold cutlass in Ellsworth during at least the month of July. He also had what appeared to be reliable information from Pastor Lowry that Mr. VanZant had become a resident of Franklin Street, Ellsworth, Maine, having recently moved here from Arkansas. When he saw the gold cutlass with Arkansas plates leaving the driveway of the VanZant residence, he drew the reasonable inference that the likely operator of that vehicle was a resident of Maine and that he should have changed his vehicle's registration by August 1.

The situation confronting Officer Mote on August 1 was not the same as merely seeing the same vehicle with out-of-state plates in Ellsworth off and on during the month of July. That circumstance, in and of itself, would not give an officer a reasonable articulable suspicion justifying the stop of the vehicle. In this case the officer possessed facts that reasonably led him to believe that the operator of the gold cutlass was indeed a resident of the area and the vehicle had been in the area for at least 30 days, leading to the conclusion that a traffic infraction was occurring.

After stopping the vehicle, the officer asked only for the Defendant's name and identification, including a driver's license. Defendant was not arrested; nor was he physically restrained; nor was his vehicle searched. When Defendant was unable to produce a driver's license, the officer gave him a summons for operating without a license and for failure to provide proof of insurance. Under the second prong of the *Trullo* inquiry, the officer's actions were reasonably related in scope to the traffic law compliance concerns that justified the interference in the first place. Thus, there is no basis for the suppression of any evidence.

Conclusion

Based upon the foregoing analysis, I recommend that the Court **DENY** the Motion to Suppress.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1993) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Margaret J. Kravchuk
U.S. Magistrate Judge

Dated: November 6, 2000.

U.S. District Court
District of Maine (Bangor)

CRIMINAL DOCKET FOR CASE #: 00-CR-57-ALL

USA v. TYLER
08/08/00
Dkt# in other court: None

Filed:

Case Assigned to: Judge GEORGE Z. SINGAL

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defendant

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Pending Counts:

Disposition

42:408.F MISUSE OF SOCIAL
SECURITY NUMBER in violation
of 42:408(a)(7)(B)
(1)

Offense Level (opening): 4

Terminated Counts:
NONE

Complaints:

NONE

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